

Friends of the Clearwater

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July 31 2017

Cheryl Probert
Forest Supervisor
Nez Perce and Clearwater National Forests
903 3rd Street
Kamiah, ID 83536

SENT VIA EMAIL comments-northern-nezperce@fs.fed.us

Dear Supervisor Probert:

These comments are on behalf of Friends of the Clearwater on the June 29 scoping letter for several projects. In the past, we have routinely asked to be updated on these projects. We recently learned that there have been past projects, mainly mining, where we were not notified. We expect that you will fulfill your duty to public and citizens and inform those of us who request to be informed when decisions are made.

Also, the Sally Exploration Drilling mining proposal description does not comport with the map. The description (page 13) says it is in Kirks Fork (like Cherry Exploration) but the map shows it as being in Deadwood Creek. Which is accurate?

The scoping period needs to be reopened at least for this and other projects, if similar errors have occurred.

Baner Mining/Drilling

The scoping letter alleges that the work will be done in one year from the decision. Yet, work must be ended by October 1 for the season. Does that mean this project will go into next year? It is also unclear whether 8 or 16 separate dills sites would be drilled and how much temporary road would be built.

The small scale map makes it appear that that some of the proposed sties are very close to Baner Creek and not along the road. Site-specific details are lacking as to potential for contamination of groundwater. The holes would be very deep, 750 to 1000 feet deep. Further, Baner Creek is a part of the Deadwood drainage, an area of very high habitat potential for Westslope cutthroat trout and a known population of that species.

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under

the ESA must be enforced, even to deny mining operation and: “of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns.” (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995): Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are “reasonably incident” will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are “reasonably incident” would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Cherry Exploration Mining/Drilling

One reason this cannot be approved with a mere CE is that it would intrude in the roadless area, Meadow Creek (or West Meadow Creek, as the Forest Service calls it). Some of the drill sites are clearly within the inventoried roadless area and the access road is either within or on the boundary of the roadless area. This is not revealed in the scoping letter nor is there any discussion as to how or whether this complies with the Idaho Roadless Rule.

There is little or no evidence of previous mining in the area and no evidence of roads. This requires, at minimum, an EA.



The impact on water quality, riparian area and fish habitat need to be assessed. The proposed “temporary road” would go down a tributary to Kirks Fork, though the map is small-scale. This would have tremendous negative impact on TES listed species. Kirks Fork is listed as critical bull trout and steelhead habitat and is occupied that those species. It is also crucial for Westslope cutthroat trout.

Also regarding water quality, site-specific details are lacking as to potential for contamination of groundwater. The holes would be very deep, 750 to 1000 feet deep. This is crucial information.

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The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), cert. denied. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a

logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

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In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with NEPA in terms of roadless analysis and/or the Idaho Roadless Rule, whether it meets clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Sally Exploration

Where will this take place, the Kirks Fork or the Deadwood drainage? If the latter, what are the cumulative impacts of this mining proposal and the nearby Baner mining proposal? Indeed, the Baner Creek proposed drill holes are closer to proposed majority of holes in this project (to the south) than those holes are to the ones in the north. This violates NEPA. These are cumulative impacts and potentially connected actions that must be analyzed in a single NEPA document.

The scoping letter alleges that the work will be done in one year from the decision. Yet, work must be ended by October 1 for the season. Does that mean this project will go into next year? It is also unclear whether 19 or 38 separate drills sites would be drilled and how much temporary road would be built.

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In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, NEPA and whether it complies with clean water law and policy for ground and surface water. Lastly, we seriously question and the amount of time this project would take, given there could be up to 38 holes drilled.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

North Fork Aspen Regeneration

Nowhere in the forest plan, or in the Middle Black FEIS document (the BHROWS project), or in the Forest Service’s Forest Habitat Types of Northern Idaho: A Second Approximation (GTR INT-236) is aspen even mentioned. Only one small reference in Chapter 1.0 in the forest plan revision assessment is aspen mentioned.

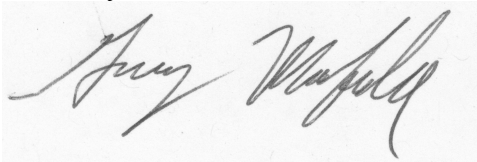
This is a project designed by someone who doesn't understand the ecology of northern Idaho. While such a project might make sense for parts of Colorado, New Mexico, or Utah, it is a fool's errand here. Again, aspen is not even mentioned in the Forest Services own research (see above) on habitat types in northern Idaho.¹ At best, aspen here tend to be found in talus fields or in small and isolated sites.

The allegation that aspen are declining here is not supported in the scoping letter. That may be true where aspen make up a more significant part of the forest types, as noted above, but the scoping letter provides no evidence as to the past extent of aspen in the North Fork Clearwater or recent declines. Rather than doing this project, the Forest Service should ensure that older forests are not logged to protect truly rare species such as fisher.

Summary

The mining projects all need at least an EA before they could be approved. The aspen project is one out of place, that shouldn't be pursued. Again, keep us updated on all of these projects.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Macfarlane", written in dark ink on a light-colored background.

Gary Macfarlane

¹ Aspen is mentioned in the habitat types of central Idaho, (GTR INT-114), as would be expected. This suggests that northern Idaho is not good aspen habitat, perhaps because of the climate here—overall it is wetter than other parts of the US Rockies, especially in winter spring and fall—is wetter than the rest of the Rockies though it lacks the summer monsoonal type precipitation found over most of the US the Rockies.